

Wednesday, March 26, 2003

The Board met at its offices at 450 N Street, Sacramento, at 9:30 a.m., with Ms. Migden, Chairwoman, Mr. Parrish, Vice Chairman, Mr. Leonard, Mr. Chiang and Mr. Westly present.

ADMINISTRATIVE SESSION

REQUEST FOR PARTICIPATION IN THE STREAMLINED SALES TAX PROJECT

Ramon Hirsig, Deputy Director, Sale and Use Tax Department, made introductory remarks.

Speakers: Bill Dombrowski, President, California Retailers Association

Upon motion of Mr. Westly, seconded by Ms. Migden and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, the Board approved staff's recommendation to participate as an Observer State (non-voting participant) in the Streamlined Sales Tax Project.

Mr. Westly left the Boardroom and Ms. Mandel entered on behalf of Mr. Westly in accordance with Government Code section 7.9.

LEGAL APPEALS MATTERS, ADJUDICATORY

David J. Pedroli, 151696

11-19-99, \$6,665.91 Tax, \$666.59 Failure to File Penalty

Considered by the Board: Hearing Notice Sent – No Response

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be denied and redetermined as recommended by the Appeals Division.

Seyed Razavi, 118219

4-1-00 to 2-15-01, \$227,953.11 Tax, \$11,983.70 Failure to File Penalty

Considered by the Board: December 4, 2003

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be denied and redetermined as recommended by the Appeals Division.

Hovanes P. Derbederian, 128563

10-1-97 to 9-30-00, \$57,999.33 Tax, \$5,799.94 Negligence Penalty

Considered by the Board: December 5, 2003

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

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Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be denied and redetermined as recommended by the Appeals Division.

Biatrix Derbederian, 128562

4-1-97 to 3-31-00, \$48,278.18 Tax, \$4,827.82 Negligence Penalty

Considered by the Board: December 5, 2003

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be denied and redetermined as recommended by the Appeals Division.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

Heather K. Cahn, 162184

1999, \$416.00 Assessment

Considered by the Board: February 5, 2003

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Chiang, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted a decision reversing the action of the Franchise Tax Board.

Michael R. and Vicki A. Kappmeyer, 153703

1995, \$10,676.00 Assessment

Considered by the Board: December 3, 2003

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Chiang, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, ADJUDICATORY

Maria Curt, 174159

2000, \$1.00 or more Claim for Credit

Considered by the Board: February 5, 2003

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Chiang, seconded by Mr. Westly and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board

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**SALES AND USE TAX MATTERS, DENIALS OF CLAIMS FOR REFUND,
ADJUDICATORY**

Young Boo Moon, 203755

1-1-92 to 6-30-94, \$136,667.24 Tax

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board granted the claim for refund.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following items: *Costco Wholesale Membership Co., 132058; Michael P. and Kristy S. Shelley; 17161, Frankie Renee Rios, 117109; and, Tahoe Vista Sports, Inc., 142835.*

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders:

Industrial Systems Associates, Inc., 42237

8-14-95 to 9-30-98, \$284,949.49 Tax

Action: Deny the petition for rehearing as recommended by the Appeals Division.

Costco Wholesale Membership Co., 132058

12-25-00 to 3-18-01, \$10,000.00 Tax

Action: The Board deferred consideration.

Michael P. and Kristy S. Shelley, 17161

1-1-95 to 6-30-98, \$175,821.43 Tax, \$17,582.17 Negligence Penalty

Action: The Board deferred consideration.

Valley By-Products, Inc., 89000794760

1-1-91 to 9-30-95, \$115,615.97 Tax, \$1,105.55 Failure to File Penalty

Action: Redetermine as recommended by the Appeals Division.

Frankie Renee Rios, 117109

7-1-97 to 9-30-00, \$50,864.44 Tax, \$5,086.40 Negligence Penalty

Action: The Board took no action.

John P. Gooding, 93426

1-1-96 to 12-31-96, \$14,788.16 Tax

Action: Redetermine as recommended by the Appeals Division.

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Tahoe Vista Sports, Inc., 142835

7-1-98 to 3-31-01, \$12,728.75 Tax

Action: The Board deferred consideration.

A. Strouse & Son Glass, Inc., 158230

4-1-98 to 3-31-01, \$3,010.50 Tax

Action: Redetermine as recommended by the Appeals Division.

Frank Thomas, Inc., 106369

1-1-97 to 9-30-99, \$34,295.59 Tax

Action: Redetermine as recommended by the Appeals Division.

Team Surgical, Inc., 37918

10-1-95 to 3-31-99, \$00.00 Tax

Team Post-Op, Inc., 40815

5-12-98 to 3-31-99, \$00.00 Tax

Action: Redetermine as recommended by the Appeals Division.

Rami Michell Darghalli, Mashhour Mashhour and Sumaieh Mashhour, 207394

October 31, 2002 Notice of Seizure and Forfeiture

Action: Determined that staff properly seized the cigarettes.

Layth Saeed Wazzi, Nasheit K. Yacoub and Ray Damman, 206822

October 23, 2002 Notice of Seizure and Forfeiture

Action: Determined that staff properly seized the cigarettes.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

The Board deferred consideration of the following item: *Thomas C. Norman*, 173676.

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders:

BK Consulting Services, 168692

8-31-2000, \$139.07 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Bafco, Inc., 183231

1998, \$2,000.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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Frank and Sheila D. Bloom, 174721

1996, \$1.00 or more Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

David W. Brown, 173001

1999, \$943.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Donna D. Leal, 166623

1996, \$255.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Joy M. MacFarlane, 166382

1998, \$591.08 Claim for Refund

Action: Sustain the action with concession by the Franchise Tax Board.

Thomas C. Norman, 173676

1997, \$2,765.59 Claim for Refund

Action: The Board deferred consideration of this matter.

Julie A. Quinet, 171936

1997, \$534.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Howard Solomon, 164538

1997, \$738.11 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Bruce Wortman, 174084

1999, \$949.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Leonard R. and Denise K. McNeil, 76201

1995, \$12,111.00 Assessment

Action: Deny the petition for rehearing.

PPG Industries, Inc., 131797

1977, \$289,794.00 Claim for Refund

1978, \$159,112.00 Claim for Refund

1979, \$318,160.00 Claim for Refund

1980, \$591,910.00 Claim for Refund

Action: Deny the petition for rehearing.

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Yi-Shin and Mai-Yun Tsai, 167973

1998, \$7,550.00 Assessment

Action: Deny the petition for rehearing.

Joseph and Hedva Zer-Ilan, 99342

1994, \$140,250.00 Assessment

Action: Grant the petition for rehearing.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Mr. Chiang, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders:

Elwin O. Angel, 192083

2002, \$332.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Hilda Grace Bell, 172284

2001, \$348.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

James Reuben Burson, 193941

2002, \$375.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Ophsie L. Campbell, 193461

2002, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Nhu D. Chiem, 191603

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Robert Coombs, 186446

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Valerie J. Cornelius, 183628

2001, \$240.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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J. J. Darling, 187239

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Yolanda Fletcher, 168669

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Lionell Fontenette, 187238

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Mariah Griffin, 166416

2001, \$240 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Gerald K. W. Johnson, 173485

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Addie Lawson, 158098

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Aisha Wilson, 165079

2001, \$348.00 Claim for Credit

Action: Reverse the action of the Franchise Tax Board.

Daymita Young, 174377

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Yevgenya Shevtsov, 151096

2001, \$348.00 Claim for Credit

Action: Grant the petition for rehearing as recommended by staff.

SALES AND USE TAX MATTERS, REDETERMINATIONS AND RELIEF OF PENALTIES, CONSENT

With respect to the Sales and Use Tax Matters, Redeterminations and Relief of Penalties, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders:

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Howard Industries, Inc., 158227

7-1-97 to 6-30-00, \$201,179.03

Action: Approve the redetermination as recommended by staff.

Summit Aviation, Inc., 164648

12-9-96, \$499,224.00

Action: Approve the redetermination as recommended by staff.

Nicolas Cage, 183248

11-10-00, \$117,975.00

Action: Approve the redetermination as recommended by staff.

Box USA Group, Inc., 83140

5-22-96 to 12-31-98, \$58,052.30

Action: Approve the redetermination as recommended by staff.

The Reynolds & Reynolds Company, 163977

4-1-98 to 3-31-01, \$91,358.68

Action: Approve the redetermination as recommended by staff.

Tustin Nissan, 207315

10-1-01 to 12-31-01, \$61,455.80

Action: Approve the relief of penalty as recommended by staff.

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

The Board deferred consideration of the following item: *Nisssan Motor Acceptance Corp, 93045.*

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Chiang not participating on *AT&T Wireless PCS, LLC, 173787*, the Board made the following orders:

Rafael Torres, 208543

6-27-01, \$54,547.18

Action: Approve the credit and cancellation as recommended by staff.

Curtis Rockum Nelsen, 204793

3-7-00 to 12-31-00, \$

Action: Approve the credit and cancellation as recommended by staff.

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The California Credit Union, 115923

1-1-98 to 3-31-01, \$69,727.04

Action: Approve the refund as recommended by staff.

Nissan Motor Acceptance Corp., 93045

7-1-97 to 3-31-02, \$2,763,285.73

Action: The Board deferred consideration.

Chevron U.S.A., Inc., 206741

7-1-97 to 3-31-99, \$66,049.57

Action: Approve the refund as recommended by staff.

Tenet Healthsystem Hospitals, Inc., 192866

7-1-98 to 3-31-02, \$91,640.66

Action: Approve the refund as recommended by staff.

ATMI Ecosys Corporation, 129041

7-1-00 to 9-30-00, \$144,317.36

Action: Approve the refund as recommended by staff.

Bayer Corporation, 184384

1-1-02 to 3-31-02, \$110,174.17

Action: Approve the refund as recommended by staff.

Bell Helicopter Textron, Inc., 207112

10-1-98 to 12-31-01, \$144,731.25

Action: Approve the refund as recommended by staff.

Bachrach Clothing, Inc., 206016

7-1-98 to 6-30-01, \$56,103.16

Action: Approve the refund as recommended by staff.

Xyplex, Inc., 129080

4-1-98 to 6-30-99, \$88,542.59

Action: Approve the refund as recommended by staff.

Lincare, Inc., 160244

10-1-97 to 12-31-99, \$125,526.66

Action: Approve the refund as recommended by staff.

Emanuel Medical Center, Inc., 143732

7-1-98 to 6-30-02, \$139,178.97

Action: Approve the refund as recommended by staff.

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Western United Insurance Company, 138450

4-1-98 to 6-30-01, \$94,344.11

Action: Approve the refund as recommended by staff.

Ares Management LP, 206659

4-1-99 to 3-31-02, \$60,330.07

Action: Approve the refund as recommended by staff.

Rehrig Pacific Company, 183244

4-1-99 to 6-30-02, \$69,716.08

Action: Approve the refund as recommended by staff.

Precision Computer Services, Inc., 208954

10-1-02 to 12-31-02, \$59,764.56

Action: Approve the refund as recommended by staff.

Siemens Info & Comm. Networks, Inc., 144049

1-1-01 to 3-31-01, \$355,263.86

Action: Approve the refund as recommended by staff.

Quality Stores, Inc., 182281

7-1-00 to 3-31-01, \$170,906.51

Action: Approve the refund as recommended by staff.

Wilson Industries, Inc., 190764

10-1-00 to 12-31-00, \$177,188.75

Action: Approve the refund as recommended by staff.

MAHI Networks, Inc., 190059

9-13-99 to 6-30-01, \$165,134.10

Action: Approve the refund as recommended by staff.

RDO Agriculture Equipment Co., 182290

1-1-02 to 3-31-02, \$62,192.87

Action: Approve the refund as recommended by staff.

AT&T Wireless PCS, LLC, 173787

4-1-01 to 6-30-01, \$144,666.69

Action: Approve the refund as recommended by staff. Mr. Chiang not participating.

Genoa Corporation, 155658

10-1-01 to 12-31-01, \$51,623.89

Action: Approve the refund as recommended by staff.

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Mainsoft Corporation, 187552

1-1-02 to 3-31-02, \$92,311.04

Action: Approve the refund as recommended by staff.

Rincon Catering, Inc., 152349

10-1-98 to 9-30-01, \$88,091.52

Action: Approve the refund as recommended by staff.

PROPERTY TAX MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

With respect to the Property Taxes Matters Not Subject to Contributions Disclosure Statute Agenda, upon a single motion of Mr. Parrish, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang not participating, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

Audit

ABS-CBN Telecom North America (7581)

1999, \$166,000.00 Escaped Assessment, \$4,600.00 Penalty, \$15,180.00 In-Lieu Interest

2000, \$212,000.00 Escaped Assessment, \$21,200.00 Penalty, \$50,880.00 In-Lieu Interest

2001, \$115,000.00 Escaped Assessment, \$11,500.00 Penalty, \$17,250.00 In-Lieu Interest

2002, (\$90,000.00) Escaped Assessment

Action: Adopt the audit escaped assessment, plus penalties and assessment in lieu of interest as recommended by staff. Mr. Chiang not participating. Ms. Mandel not participating in accordance with Government Code section 7.9.

Unitary and Nonunitary Escaped Assessments

Pacific Gas & Electric Company (135)

1999-2002, \$874,060.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff. Mr. Chiang not participating. Ms. Mandel not participating in accordance with Government Code section 7.9.

Pacific Bell (279)

1999-2002, \$25,338,060.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff. Mr. Chiang not participating. Ms. Mandel not participating in accordance with Government Code section 7.9.

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Sacramento Municipal Utility District (487)

1999-2001, \$138,678,351.00 Value

Action: Adopt nonunitary escaped assessment as recommended by staff. Mr. Chiang not participating. Ms. Mandel not participating in accordance with Government Code section 7.9.

Union Pacific Railroad Company (843)

1999-2002, \$472,870.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff. Mr. Chiang not participating. Ms. Mandel not participating in accordance with Government Code section 7.9.

Sprint Communications Co., L.P. (2014)

2000, \$582,500.00 Value

Action: Adopt nonunitary escaped assessment as recommended by staff. Mr. Chiang not participating. Ms. Mandel not participating in accordance with Government Code section 7.9.

Bay Area Cellular Telephone Company, dba AT&T Wireless Services (2502)

1999-2002, \$2,623,601.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff. Mr. Chiang not participating. Ms. Mandel not participating in accordance with Government Code section 7.9.

Verizon Wireless LLC, dba Verizon Wireless (2512)

2002, \$117,930.00 Value

Action: Adopt unitary escaped assessment as recommended by staff. Mr. Chiang not participating. Ms. Mandel not participating in accordance with Government Code section 7.9.

Sacramento Valley Limited Partnership, dba Verizon Wireless (2513)

2001-2002, \$1,253,499.00 Value

Action: Adopt unitary escaped assessment as recommended by staff. Mr. Chiang not participating. Ms. Mandel not participating in accordance with Government Code section 7.9.

Los Angeles SMSA Ltd. Partnership, dba Verizon Wireless (2532)

2002, \$1,083,904.00 Value

Action: Adopt unitary escaped assessment as recommended by staff. Mr. Chiang not participating. Ms. Mandel not participating in accordance with Government Code section 7.9.

AB Cellular Holding, LLC, dba AT&T Wireless Services (2547)

1999-2002, \$2,998,860.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff. Mr. Chiang not participating. Ms. Mandel not participating in accordance with Government Code section 7.9.

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GTE Mobilnet of California, Ltd. Partnership, dba Verizon Wireless (2559)

2002, \$221,357.00 Value

Action: Adopt unitary escaped assessment as recommended by staff. Mr. Chiang not participating. Ms. Mandel not participating in accordance with Government Code section 7.9.

AT&T Wireless Services of California, Inc., dba AT&T Wireless Services (2606)

1999-2002, \$19,463,841.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff. Mr. Chiang not participating. Ms. Mandel not participating in accordance with Government Code section 7.9.

Cagel Cellular Communications Corporation, dba AT&T Wireless Services (2611)

1999-2002, \$979,549.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff. Mr. Chiang not participating. Ms. Mandel not participating in accordance with Government Code section 7.9.

GTE Mobilnet of Santa Barbara L.P., dba Verizon Wireless (2627)

1999-2002, \$454,011.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff. Mr. Chiang not participating. Ms. Mandel not participating in accordance with Government Code section 7.9.

GTE Mobilnet of Central California Inc., dba Verizon Wireless (2667)

1999-2000, \$166,839.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff. Mr. Chiang not participating. Ms. Mandel not participating in accordance with Government Code section 7.9.

SLO Cellular, Inc., dba CellularOne of San Luis Obispo (2687)

1999-2002, \$92,328.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff. Mr. Chiang not participating. Ms. Mandel not participating in accordance with Government Code section 7.9.

Alpine PCS, Inc. (2746)

2001, \$84,266.00 Value

Action: Adopt unitary escaped assessment as recommended by staff. Mr. Chiang not participating. Ms. Mandel not participating in accordance with Government Code section 7.9.

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Pacific Bell Wireless, LLC, dba Cingular Wireless (2748)

1999-2002, \$3,541,941.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.
Mr. Chiang not participating. Ms. Mandel not participating in accordance with Government Code section 7.9.

AT&T Wireless PCS, LLC (2749)

1999-2002, \$1,036,012.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.
Mr. Chiang not participating. Ms. Mandel not participating in accordance with Government Code section 7.9.

Williams Communications LLC, dba Williams Network, Inc. (7819)

2001-2002, \$58,153.00 Value

Action: Adopt unitary escaped assessment as recommended by staff. Mr. Chiang not participating. Ms. Mandel not participating in accordance with Government Code section 7.9.

Sprint Telephony PCS, L.P. (2720)

1999-2002, \$1,913,370.00 Value

Action: Adopt unitary and nonunitary escaped assessment as recommended by staff.
Mr. Chiang not participating. Ms. Mandel not participating in accordance with Government Code section 7.9.

Sprint Spectrum L.P. (2722)

2001-2002, \$443,936.00 Value

Action: Adopt unitary escaped assessment as recommended by staff. Mr. Chiang not participating. Ms. Mandel not participating in accordance with Government Code section 7.9.

Nextel of California, Inc. (2737)

2001-2002, \$244,544.00 Value

Action: Adopt unitary escaped assessment as recommended by staff. Mr. Chiang not participating. Ms. Mandel not participating in accordance with Government Code section 7.9.

Board Roll Changes

Action: Approve Board Roll Changes as recommended by staff (Exhibit 3.16).
Mr. Chiang not participating. Ms. Mandel not participating in accordance with Government Code section 7.9.

Exhibits to these minutes are incorporated by reference.

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CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Amy Elizabeth Forlan, 183954

1988, \$1.00 or more Claim for Refund

For Claimant:

Amy Forlan

For Franchise Tax Board:

Jozel Brunett, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant has shown that she made a timely claim for refund.

Appellant's Exhibit: Numerous letters (Exhibit 3.17)

Respondent's Exhibit: Section 19322.1 of California Income Tax Laws and Regulations
(Exhibit 3.18)

Action: Upon motion of Mr. Parrish, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board reversed the action of the Franchise Tax Board.

PETITIONS FOR RELEASE OF SEIZED PROPERTY

Steven L. and Florence Marlene Peck, 201687

October 10, 2002 Notice of Seizure and Forfeiture

For Petitioner:

Steven Riewerts, Manager

For Property and Special Taxes Department

Blanca Breeze, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the cigarettes should be forfeited to the State of California because they are described by subdivision (b) of Revenue and Taxation Code section 30436.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Kenny Ai Pham, 207395

December 11, 2002 Notice of Seizure and Forfeiture

For Petitioner:

Kenny Pham (Current Owner)

Tung Tran (Previous Owner)

For Property and Special Taxes Department

Blanca Breeze, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the cigarettes were erroneously or illegally seized by the Board and should be forfeited to the State of California because they are described by subdivision (b) of Revenue and Taxation Code section 30436.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

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SALES AND USE TAX APPEALS HEARINGS**Martin Lee Manning, 143928**

1-1-97 to 3-31-99, \$00.00 Tax, \$15,252.29 Fraud Penalty

For Petitioner:

Steven A. Wilson, Attorney

Martin Lee Manning

For Sales and Use Tax Department:

Carla Caruso, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the fraud penalty was properly assessed.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Interstore Transfer Systems LTD, 112991

10-1-98 to 11-30-99, \$38,625.30 Tax, \$00.00 Failure to File Penalty

For Petitioner:

Gary Kimzey, Consultant

For Sales and Use Tax Department:

Randy Ferris, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner was a retailer engaged in business in California, and therefore subject to use tax collection liability.

Whether the amount of unreported taxable sales is excessive.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Quality House Envelope & Printing Specialists, Inc. 61228

1-1-96 to 12-31-98, \$18,486.95 Tax, \$00.00 Negligence Penalty

For Petitioner:

John Spurgeon, Attorney

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the evidence establishes that certain fixed assets were sold for resale and that certain other fixed assets were disposed of as obsolete rather than sold.

Whether petitioner meets the requirements for relief under Revenue and Taxation Code section 6596 with respect to petitioner's alleged reliance on advice that the Sales and Use Tax Department purportedly provided in a prior audit.

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board reduced the measure of taxable sales of fixed assets.

Upon motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board reduced the percentage factor of error related to disallowed exempt sales to 13.3 percent.

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Coast Corporation, 61746

Philip K. Hwang, 61747

5-1-98 to 6-30-99, \$76,948.70 Tax, \$7,074.72 Negligence Penalty

1-1-96 to 4-30-98, \$129,704.59 Tax, \$12,970.49 Negligence Penalty

For Petitioner:

Abraham R. Brown, Attorney

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether adjustments for inventory are warranted. Petitioners contend that the inventory increased from \$95,000.00 on January 1, 1996, to \$954,797.00 on December 31, 1997, and to \$1,848,168.00 on December 31, 1998.

Whether an adjustment for waste is warranted. Petitioners contend that an adjustment to purchases of 5-7 percent of total purchases is warranted.

Whether credit is warranted for bad debts. Petitioners provided a listing of accounts totaling \$176,766.00 that they claim are for bad debts.

Whether additional adjustment is warranted for purchases made without a resale certificate. Petitioners contend that the materials consumed by them are subject to sales tax.

Whether the audited markup is excessive. Petitioners contend the shelf test markup is excessive because it is not properly weighted.

Whether the penalties for negligence were properly applied. Petitioners contend the penalties should not apply, explaining that a Certified Public Accountant was hired to help in preparing their accounting but they were never informed that they were making errors.

The Appeals Division noted that the disallowance of the sales for resale under Case ID 61747 warrants discussion, although Mr. Hwang did not raise this as an issue.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

ADMINISTRATIVE SESSION

PROPOSED 2003 BOARD MEETING DATE CHANGES

Upon motion of Ms. Migden seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the December Board meeting date be changed to December 4, 2003.

MEMBER COMMENT

On behalf of the Board, Mr. Leonard acknowledged the men and women of the Board of Equalization and their families who are serving in the armed forces for all the sacrifices they are making during this time of war and stated that the Board's prayers and thoughts are with them.

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ADMINISTRATIVE SESSION**OFFERS IN COMPROMISE RECOMMENDATIONS**

Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved the *Offers in Compromise of Paul B. and Karyn L Birchall; Aaron's For Kids, LLC; Basil J. Georges; Gregory B. Moger; Dennis P. and Geraldine H. Day; and, Robert M. Wuflestad.*

The Board deferred consideration of *Kelly R. Beremand; Rauven Aviv; and, Alfred R. and Imogene Doerfler*, until later in the day.

ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Mandel, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders except deferring consideration of *Proposed Revisions to Compliance Policy and Procedures Manual Chapter 1, Introduction.*

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California (Exhibit 3.19).

Domingo U. Garcia, Tax Auditor, Norwalk District Office
Diana Marie Castillo, Tax Technician III, Excise Taxes Division, Headquarters
Mitsuko Marian Yokotobi, Tax Technician III, Excise Taxes Division,
Headquarters
Jean Jordan, Information Systems Technician, Technology Services Division,
Headquarters

Action: Approve the Board Meeting Minutes of February 5-6, 2003.

Action: Approve the 2003 Timber Advisory Committee Membership (Exhibit 3.20).

Action: Approve the Application for Changed Assessment, Form BOE 305-AH (Exhibit 3.21).

Action: Approve the 2000-02 Sustained Superior Accomplishment Award Nominees (Exhibit 3.22).

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CHIEF COUNSEL MATTERS

RULEMAKING

Petition to Amend Property Tax Rule 462.040, Change in Ownership-Joint Tenancies and Property Tax Rule 462.240, The Following Transfers do not Constitute a Change in Ownership

Kristine Cazadd, Assistant Chief Counsel, Property Taxes Section, Legal Division, made introductory remarks regarding the *Petition to Amend Property Tax Rule 462.040, Change in Ownership-Joint Tenancies and Property Tax Rule 462.240, The Following Transfers do not Constitute a Change in Ownership*.

Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board deferred consideration of this matter to the next Board meeting (Exhibit 3.23).

SALES AND USE TAX APPEALS HEARINGS

Intelligent Media, Inc., 154626

7-1-98 to 6-30-00, \$473,001.00 Tax

For Petitioner:

Appearance Waived

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether there is reason to recommend adjustment to the Sales and Use Tax Department's determination of the measure of tax. Petitioner claims that the tax accrual reconciliation does not adequately account for extraneous non-tax amounts being included in the tax accrual account.

Whether the Department properly determined that petitioner's purchases of certain fixed assets are subject to use tax. Petitioner contends that the Department has assessed use tax on purchases that are legally subject to the application of sales tax against the seller of the property.

Action: Upon motion of Ms. Migden, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

U.S. Telecom International Inc., 130652

2-22-94 to 9-30-00, \$56,019.88 Tax, \$5,602.16 Failure to File Penalty

For Petitioner:

Appearance Waived

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the amounts listed on petitioner's schedule of California sales include nontaxable installation labor.

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Whether petitioner has shown that his failure to make a timely return is due to reasonable cause and circumstances beyond his control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect.

Action: Ms. Mandel moved that the petition be denied and redetermined as recommended by the Appeals Division. The motion was seconded by Ms. Migden. Mr. Parrish made a substitute motion to cancel the penalty, otherwise redetermine the petition as recommended by the Appeals Division. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.

Upon motion of Ms. Mandel, seconded by Ms. Migden and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Leonard voting no, Mr. Parrish abstaining, the Board ordered that the petition be denied and redetermined as recommended by the Appeals Division.

FINAL ACTION ON PETITIONS FOR RELEASE OF SEIZED PROPERTY HEARD MARCH 26, 2003

Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board determined that in the petition of *Steven L. and Florence Marlene Peck, 201687*, the staff properly seized the cigarettes.

Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board determined that in the petition of *Kenny Ai Pham, 207395*, the staff properly seized the cigarettes.

FINAL ACTION ON PETITIONS HEARD MARCH 26, 2003

Mr. Parrish moved to cancel the negligence penalty, otherwise redetermine the petition as recommended by the Appeals Division in the petition of *Coast Corporation, 61746 and Philip K. Hwang, 61747*. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden and Ms. Mandel voting no, Mr. Chiang not participating.

Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang not participating, the Board ordered that the petition be denied and redetermined as recommended by the Appeals Division.

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Mr. Leonard moved to cancel the fraud penalty, otherwise redetermine the petition as recommended by the Appeals Division in the petition of *Martin Lee Manning, 143928*. The motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.

Upon motion of Ms. Mandel, seconded by Ms. Migden and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, the Board ordered that the petition be denied and redetermined as recommended by the Appeals Division.

Upon motion of Ms. Migden, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition of *Interstore Transfer Systems LTD, 112991*, be denied and redetermined as recommended by the Appeals Division.

The Board recessed at 12:00 p.m. and reconvened at 1:30 p.m. with Ms. Migden, Mr. Leonard, Mr. Chiang and Ms. Mandel present.

PUBLIC HEARINGS

Sales and Use Tax Regulation 1553, Miscellaneous Repair Operations - Proposed Regulatory Changes Regarding the Application of Tax to Watch and Jewelry Repairs

Janice Thurston, Assistant Chief Counsel, Legal Division, stated for the record *Regulation 1553, Miscellaneous Repair Operations*, is proposed to be amended to interpret, implement and make specific Revenue and Taxation Code section 6006 as it applies to transfers of tangible personal property pursuant to repairs of watches and jewelry. Amendments are proposed to (1) amend subdivision (e) of Regulation 1553 to clarify that repairers are consumers of parts used in repairing watches and jewelry and that tax is due on their cost except as defined therein; and (2) to make non-substantive changes to correct the reference to Revenue and Taxation Code section 6006 in the California Code of Regulations, add a reference to *Regulation 1546*, correct a typographical error in subdivision (a) of the regulation, and enhance clarity and consistency.

Speakers: Speakers were invited to address the Board, but there were none.

Action: Upon motion of Mr. Leonard, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish absent, the Board adopted the amendment to *Sales and Use Tax Regulation 1553, Miscellaneous Repair Operations*, as published (Exhibit 3.24).

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Sales and Use Tax Regulation 1707, Electronic Funds Transfer – Proposed Regulation Regarding Requirements for Electronic Funds Transfer Reporting

Janice Thurston, Assistant Chief Counsel, Legal Division, stated for the record Current law, Revenue and Taxation Code sections 6479.3 and 6479.5, require the Board of Equalization to administer the Electronic Funds Transfer (“EFT”) payment process for specific types of tax payments. *Regulation 1707, Electronic Funds Transfer*, is proposed to be promulgated to interpret, implement and make specific Revenue and Taxation Code sections 6479.3 and 6479.5.

Speakers: Speakers were invited to address the Board, but there were none.

Action: Upon motion of Mr. Chiang, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish absent, the Board adopted *Sales and Use Tax Regulation 1707, Electronic Funds Transfer*, as published (Exhibit 3.25).

Sales and Use Tax Regulation 1803.5, Long-Term Leases of Motor Vehicles

Janice Thurston, Assistant Chief Counsel, Legal Division, stated for the record *Regulation 1803.5, Long-Term Leases of Motor Vehicles*, is proposed to be promulgated to interpret, implement and make specific Revenue and Taxation Code section 7205.1, enacted operative January 1, 1996 (SB 602, Stats. 1995, Ch. 676), as amended operative January 1, 1999 (AB 1946, Stats. 1998, Ch. 140) and as clarified by SB 2092 (Stats. 2002, Ch. 775, § 42). The statute changed the allocation of local use tax derived from defined long-term automobile lease transactions to the place of business of the lessor, as defined.

Speakers: Albin Koch, General Counsel, MuniServices

Action: Upon motion of Mr. Chiang, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish absent, the Board adopted the amendment *Sales and Use Tax Regulation 1803.5, Long-Term Leases of Motor Vehicles*, as published (Exhibit 3.26).

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 1:40 p.m. and reconvened immediately in closed session with Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss pending litigation, settlements (Revenue and Taxation Code sections 6901, 7093.5 and 50156.11) and personnel matters (Govt. Code § 11126 (a)).

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The Board reconvened at 2:00 p.m. in open session with Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel present.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

James Martella, 168045

1991, \$179.00 Claim for Refund

1993, \$73.00 Claim for Refund

1994, \$100.00 Claim for Refund

1996, \$227.00 Claim for Refund

1997, \$294.50 Claim for Refund

For Claimant:

James Martella

For Franchise Tax Board:

Mark McEvilly, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether respondent correctly denied appellant's claim for refund.

Appellant's Exhibit: Earnings Withholding order (Exhibit 3.27)

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Polaroid Corporation, 62415

1990, \$5,287.00 Assessment

1991, \$3,151,099.00 Assessment

For Appellant:

Benjamin Byrd, Vice President

Mr. Charles Moll, Representative

For Franchise Tax Board:

Andrea Chang, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the proceeds from a patent infringement lawsuit settlement represent business or non-business income.

To the extent that the infringement proceeds are business income, whether they should be included in the sales factor.

Whether the gross receipts from the disposition of financial instruments should be included in the sales factor denominator. (Respondent concedes that the net interest income may be included—as an offset.)

Whether an insurance company's reimbursement of legal expenses (under a corporate officer and director liability policy) should be excluded from the sales factor denominator.

Whether the gross receipts from the sale of fixed assets should be included in the denominator of the sales factor. (Respondent concedes that such amounts may be included—as an offset.)

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

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Thomas R. Ackerman, 186454

1989, \$1.00 or more Interest Assessment, \$45.25 Penalty

For Appellant: Thomas R. Ackerman

For Franchise Tax Board: Jozell Brunett, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether interest assessed by respondent should be abated.

Respondent's Exhibit: FTB Printouts (Exhibit 3.28)

Action: Upon motion of Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

ADMINISTRATIVE SESSION**OFFERS IN COMPROMISE RECOMMENDATIONS**

Mr. Leonard moved that in the case of *Kelly R. Beremand* the Board accept a \$100.00 as a minimum with a stipulation that the taxpayer sign a collateral agreement that if there is ever a new source of income or wealth that the obligation is still before us even though the lien is gone; in the case of *Rauven Aviv* the Board accept \$100 in lieu of the offers in compromise; and in the case of *Imogene Doerfler* the Board accept \$100 to be paid by the taxpayer and the Board remove the lien. The motion was seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes.

BOARD COMMITTEE REPORTS**Business Taxes Committee**

Upon motion of Mr. Chiang, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved the Business Taxes Committee report (Exhibit 3.29).

Property Tax Committee

Upon motion of Mr. Chiang, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved the Property Tax Committee report (Exhibit 3.30).

FINAL ACTION ON APPEALS HEARD MARCH 26, 2003

Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, in the appeal of *James Martella, 168045*, the Board sustained the action of the Franchise Tax Board.

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Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, in the appeal of *Thomas R. Ackerman, 186454*, the Board sustained the action of the Franchise Tax Board.

Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, in the appeal of *Polaroid Corporation, 62415*, the Board ordered with regards to Issue 1, the entire proceeds from the federal patent infringement lawsuit are business income.

Mr. Leonard moved with respect to Issue 2, the denominator of the sales factor shall include the entire proceeds from the federal patent infringement lawsuit. The numerator of the sales factor shall include the portion of such proceeds that was based on "lost profits" together with the interest attributable to such "lost profits." The numerator shall not include the portion of such proceeds that was based on a reasonable "royalty" or the interest attributable to such "royalty" portion. The motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Migden, Mr. Chiang and Ms. Mandel voting no.

Mr. Leonard moved with respect to Issue 3, only the net interest income from short-term cash management activities may be included in the sales factor; and, because of the statute of limitations, may only be used as an offset. The motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Migden, Mr. Chiang and Ms. Mandel voting no.

Upon motion of Mr. Leonard and seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered with regards to Issue 4, the insurance reimbursement for litigation expenses is business income, but must be excluded from the sales factor to avoid distortion of the sales factor.

Upon motion of Mr. Leonard and seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered with regards to Issue 5, inasmuch as the Franchise Tax Board has stated that it will not contest this issue on the merits due to the immateriality of the fixed asset sales, the Board finds that such sales be included in the sales factor. However, because of the statute of limitations, these fixed asset sales may only be used as an offset.

Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered the remaining Issues 2 and 3 be submitted for decision.

The Board adjourned at 3:05 p.m.

The foregoing minutes are adopted by the Board on May 28, 2003.

Note: The following cases were removed from the calendar prior to the meeting: *Amador Stage Lines, Inc., 102005, 93966; RKM Micro Systems, Inc., 48081; Long Term Investment Trust, 198764, 158367; and Mario Tejada, 162754.*

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